

Contact: Aimee Clayton

REVISIONS TO CHAPTER 7 OF THE BOARD OF REGENTS POLICY MANUAL

Action Requested: Approve proposed revisions to Chapter 7.06(D), Vendor Appeal Procedures, for publication in the Board of Regents Policy Manual.

Executive Summary: Changes are proposed to the Policy Manual to conform to current practice. The process for substantive changes involves initial review and comment by the Board (“first reading”) and final approval for publication at a subsequent Board meeting. This is the final reading of these proposed revisions.

Background: Proposed revisions to Chapter 7.06(D) were presented for Board review and comment at the September and October 2010 meetings. The agenda materials were pulled from consideration at the October meeting so that further modifications could be made pending final approval. Final proposed language, as modified following the October 2010 Board meeting, is included in Attachment A; new language has been underlined and deleted language has been stricken through. An unrevised copy of the current Chapter 7.06(D) language is included in Attachment B.

Proposed Revised Policy

VII. BUSINESS PROCEDURES

7.06(D) Vendor Appeal Procedures

The following procedures shall be used by any Vendor who wishes to file a complaint regarding a Purchasing action made pursuant to Chapter VII of this policy manual, with the exception of disputes involving the terms, conditions, obligations and interpretations of executed contracts or purchase orders; including, but not limited to, change orders. If an executed contract or purchase order contains a dispute resolution clause, that clause shall apply and not the procedure outlined in this section. The filing of a complaint shall not delay the award process if it is determined to be in the best interest of the institution. Failure to raise a timely complaint in accordance with the following procedure shall be deemed a waiver of the right to contest the matter further.

1. Informal Dispute Resolution with the University Department

A Vendor who has a concern with a decision made by a Purchasing Agent shall contact the Purchasing Agent within five (5) working days of when the Vendor became aware, or reasonably should have become aware, of the decision or action which forms the basis of the concern. The Purchasing Agent shall discuss the issue(s) with the Vendor in an attempt to resolve the dispute.

2. Initiation of Complaint to University Administration

- a. Within five (5) working days of discussing the matter with the Purchasing Agent, a Vendor (hereinafter "Complainant") shall outline the concern in writing to the institutional Purchasing Director.
- b. The complaint shall be in writing and shall include the following information:
 - i. Name, address, and contact information of the Complainant;
 - ii. Identification of the purchasing action complained of, including the RFQ/RFP number if available;
 - iii. A detailed statement of the legal and factual grounds of the complaint, including copies of relevant documents;
 - iv. The specific relief requested; and
 - v. Signature of the Complainant.
- c. Upon receipt of the complaint, the Purchasing Director shall conduct a review of the complaint and render a decision within ten (10) working days. Where information needed for the decision must be obtained from sources outside the Purchasing Department, the university's response may be delayed up to ten (10) additional working days.
- d. The Purchasing Director's decision shall be in writing and shall contain the name and contact information of the individual to whom the decision may be appealed.
- e. The decision of the Purchasing Director is final unless written appeal is filed with the individual identified in the written decision to receive the appeal. The appeal must be filed within five (5) working days of receipt of the Purchasing Director's written decision, and shall contain the specific grounds upon which appeal is made.

3. Appeal to University Administration
 - a. Upon receipt of the appeal, the institution's Business Vice President, or his/her designee, shall conduct a review of the written record of the complaint and render a decision in writing within ten (10) working days.
 - b. Copies of the decision of the institution's Business Vice President, or his/her designee, shall be provided to the Complainant and the institution's Purchasing Director.
 - c. The written decision of the institution's Business Vice President shall be final unless written appeal is filed with the General Counsel for the Board of Regents.
4. Should the complaint be affirmed at any stage of institutional review, the institutional representative responsible for reviewing the complaint may, in his/her discretion, grant the requested relief or fashion an alternate remedy as deemed appropriate. The issuance of a specific remedy shall not be subject to appeal under this procedure.
5. Copies of any written complaint received by the institution and any decision rendered pursuant to this procedure shall be forwarded to the Office of the Board of Regents if there are inter-institutional implications.
6. Appeal to the Board of Regents
 - a. Written appeal to the Board of Regents must be filed with the General Counsel for the Board of Regents within five (5) working days of receipt of the final decision of the institution's Business Vice President. The appeal must state the specific grounds on which appeal is made and include copies of all relevant documents and written institutional decisions.
 - b. Upon receipt of an appeal to the Board of Regents, the Executive Director, or his/her designee, shall take steps to assist the Complainant and the Institution in resolving the issue(s)
 - c. If the issue(s) remain unresolved, and in the opinion of the Executive Director the complaint involves serious questions of law or allegations of procedural error having a material impact on the award process, the appeal will be docketed for further review by the Board of Regents. If the appeal is docketed, the Executive Director shall notify the parties in writing of the date on which the appeal will be heard. ~~Appeal to the Board of Regents shall be at the discretion of the Executive Director. The Executive Director shall determine whether an appeal under this section will be heard by the Board of Regents, and shall notify the parties within three (3) working days whether, and if applicable, when the appeal will be heard.~~
 - d. If a right of review is granted, the parties may submit additional written argument for review by the Board of Regents. The Executive Director shall notify the parties of the deadline for submission of additional written materials. Oral argument before the Board of Regents shall not be permitted.
 - e. Following review, the Board may affirm, reverse, modify or remand all or any part of the final institutional decision. The decision of the Board of Regents is considered final agency action.

Current Policy

VII. BUSINESS PROCEDURES

7.06(D) Vendor Appeal Procedures

1. Vendor appeal procedures are currently under revision and will be updated later.

Vendors

- a. A vendor who wishes to appeal removal from a Regent institution's qualified vendor list shall, initially, attempt to resolve the issue at the institutional level.
- b. If the vendor is dissatisfied with the institution's response, the vendor may notify the Executive Director in writing of the vendor's dissatisfaction and request Board Office assistance.
- c. Complainants are required to exhaust administrative remedies at the institutional level before making a written request for review to the Executive Director.

Board Office

- a. The Executive Director or designee may then take steps to assist the vendor and the institution in resolving the issue(s).
- b. If the issue(s) remain(s) unresolved, the Executive Director, at the request of the vendor, may docket the matter for review by the Board. Any complaints from vendors received by Board members shall be referred to the Board of Regents Office for investigation. Results of the investigation shall be sent to each Board member. The vendor's written request and supporting information shall also be sent to the institution involved and that institution shall file a written response with the Board Office supporting the institution's position.
- c. If the complaint is docketed, the Executive Director will prepare a recommendation for the Board to consider. If the complaint is docketed, the results of the investigation shall constitute the basis of the Executive Director's recommendation. If the complaint is not docketed, the results of the investigation shall be sent to each Board member. A copy of the recommendation with notice of the date, time, and place of the meeting for which the matter has been docketed shall be sent to the vendor and the institution within a reasonable time. The recommendation and the Board action shall constitute a final report.

Institutional

Copies of any written complaints received by the institution shall also be sent to the Board of Regents Office if there are interinstitutional implications.